United Nations ST/AI/2017/1

Secretariat

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Administrative instruction

Unsatisfactory conduct, investigations and the disciplinary process

The Under-Secretary-General for Management, pursuant to section 4.2 of Secretary-General's bulletin ST/SGB/2009/4, and for the purpose of implementing General Assembly resolutions 61/261, 62/228, 63/253 and 68/252, staff regulations 9.3 (a) (iv) and 10.1 and chapter X of the Staff Rules, on disciplinary measures, promulgates the following:

Section 1
Scope of application

1.1 The present instruction applies to all staff members and to staff members on secondment or loan with the Secretariat from a releasing organization applying the United Nations common system of salaries and allowances, subject to the provisions of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances.

1.2 The present instruction does not apply to consultants, individual contractors, gratis personnel, interns, and other United Nations officials, such as officials other than Secretariat officials, and experts on mission, who remain subject to the provisions and procedures applicable to them under their terms of service.

Section 2
Definitions

2.1 For the purpose of the present instruction:

(a) The "responsible official" is:

(i) The Secretary-General, for reported unsatisfactory conduct on the part of an Assistant Secretary-General or Under-Secretary-General;

(ii) The head of mission, for staff members administered by the Department of Field Support and serving in a peacekeeping mission or special political mission; however, the Under-Secretary-General for Field Support is the responsible official for the purposes of deciding whether to transmit an investigation report to the Assistant Secretary-General for Human Resources Management under section 7.7;

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(iii) The respective Registrar, for staff members of the International Residual Mechanism for Criminal Tribunals and of the International Tribunal for the Former Yugoslavia;

(iv) The Under-Secretary-General for Internal Oversight Services, for staff members of the Office of Internal Oversight Services (OIOS); and

(v) The head of department or office of the subject staff member, for any other staff members;

(b) The "authorized official" for the purpose of placing a staff member on administrative leave with pay is:

(i) The Secretary-General, for staff members at the level of Assistant Secretary-General or Under-Secretary-General;

(ii) The Director-General of the United Nations Office at Nairobi, for staff members of the Office;

(iii) The Director-General of the United Nations Office at Geneva, for staff members of the Office and for staff members of the United Nations Secretariat assigned in Geneva;

(iv) The Director-General of the United Nations Office at Vienna, for staff members of that Office, the United Nations Office on Drugs and Crime and the Office for Outer Space Affairs;

(v) The Executive Director of the relevant programme, for staff members of the United Nations Environment Programme and the United Nations Human Settlements Programme;

(vi) The Under-Secretary-General for Field Support, for staff members administered by the Department of Field Support and for staff members serving in a peacekeeping or special political mission;

(vii) The Under-Secretary-General for Internal Oversight Services, for staff members of OIOS; and

(viii) The Assistant Secretary-General for Human Resources Management, for all other staff members;

(c) The "authorized official" for the purpose of placing a staff member on administrative leave without pay is:

(i) The Secretary-General, for staff members at the level of Assistant Secretary-General or Under-Secretary-General; and

(ii) The Under-Secretary-General for Management, for all other staff members;

(d) "Administrative measures" means an oral or written reprimand, reassignment and/or change of duties;

(e) "Managerial action" means an oral or written caution, warning or advisory communication, training, coaching and/or referral of the staff member to the Staff Counsellor;

(f) "Investigating entity" means an organizational entity such as an office, section or unit whose mandate includes carrying out investigations in the Organization, in any other organization that is a member of the United Nations System Chief Executives Board for Coordination (CEB) or in any other international organization, and, where the context permits, any investigative panel appointed by the responsible official;

(g) "Investigation" means a process of gathering information to establish facts in order to allow for a determination as to whether a staff member engaged in suspected unsatisfactory conduct. Investigations are administrative in nature;

(h) "Preliminary assessment" means the review and analysis by a responsible official or OIOS of information about unsatisfactory conduct in order to determine whether there are sufficient grounds to initiate an investigation.

2.2 All references in the present instruction to the authority to be exercised by the Secretary-General, Under-Secretaries-General, Assistant Secretaries-General, responsible officials, authorized officials, heads of departments or offices and other officials shall also include their officers-in-charge, acting officers and officers with delegated authority.

2.3 All references to "staff member" shall include former staff members.

2.4 Where documentation is transmitted to a staff member, the "date of receipt" shall be the earliest of:

(a) The date on which the staff member acknowledges receipt;

(b) The date on which an electronic return receipt is generated; or

(c) Seven calendar days from the date on which the documentation was transmitted to the staff member's contact information on file with the Organization, unless the staff member provides sufficient evidence of circumstances beyond the staff member's control that impeded the staff member's receipt of the documentation.

Section 3
Unsatisfactory conduct and misconduct

Unsatisfactory conduct

3.1 Unsatisfactory conduct is any conduct where a staff member fails to comply with the staff member's obligations under the Charter of the United Nations, the Staff Regulations and Rules of the United Nations or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant. Unsatisfactory conduct includes conduct of sufficient gravity that rises to the level of misconduct.

3.2 A determination that the unsatisfactory conduct is of sufficient gravity to rise to the level of misconduct may lead to the imposition of disciplinary measures, financial recovery, administrative measures and/or managerial action. A determination that the unsatisfactory conduct is not of sufficient gravity to rise to the level of misconduct may lead to administrative measures and/or managerial action.

3.3 Unsatisfactory work performance that is neither unsatisfactory conduct nor misconduct should be addressed under the performance management policy.

Misconduct

3.4 Staff rule 10.1 (a) provides that "failure by a staff member to comply with [the staff member's] obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct".

3.5 Misconduct for which disciplinary measures may be imposed includes, but is not limited to:

(a) Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the Staff Regulations and the rules and instructions implementing it;

(b) Unlawful acts (e.g. theft, fraud, the possession or sale of illegal substances, smuggling) on or off United Nations premises, and whether or not the staff member was officially on duty at the time;

(c) Misrepresentation, forgery, false certification and/or failure to disclose a material fact in connection with any United Nations claim or benefit;

(d) Discrimination, harassment, including sexual harassment, abuse of authority and retaliation;[1]

(e) Misuse of United Nations property, including equipment or files, and electronic files;

(f) Misuse of office, including breach of confidentiality and abuse of United Nations privileges and immunities;

(g) Sexual exploitation and sexual abuse;[2]

(h) Acts or behaviour that would discredit the United Nations.

3.6 Misconduct may also include assisting in, or contributing to, the commission of misconduct.

3.7 Misconduct includes conduct that occurred at any time that the staff member was employed by an organization that is a member of CEB. Such conduct, to the extent not already addressed by administrative or disciplinary action in the prior-employing organization, may be addressed as possible misconduct under the terms of the present instruction. If an investigation report by such prior-employing organization is transmitted to the United Nations for possible disciplinary action, the matter may proceed as a possible disciplinary matter under the provisions of the present instruction.

Section 4
Reporting information about suspected unsatisfactory conduct

4.1 Pursuant to staff rule 1.2 (c), staff members have the duty to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.

4.2 Information about unsatisfactory conduct may be received from staff members and any other source. This includes any information obtained during an investigation, a disciplinary process, an audit, a management enquiry or review, a judgment from a national court or information from another organization that is a member of CEB.

[1] See also ST/SGB/2008/5, on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, and ST/SGB/2017/2, on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations.

[2] See also ST/SGB/2003/13, on special measures for protection from sexual exploitation and sexual abuse.

4.3 Information about unsatisfactory conduct may be brought to the attention of:

(a) The responsible official, with a copy to OIOS; or

(b) OIOS.

If such information is provided anonymously, it must be brought to the attention of OIOS.[3]

4.4 Information of unsatisfactory conduct relating to OIOS staff shall be brought only to the attention of the Under-Secretary-General for Internal Oversight Services.

4.5 Information received from either a staff member or a non-staff member alleging unsatisfactory conduct should contain sufficient details for it to be assessed under the present instruction, such as:

(a) A detailed description of the unsatisfactory conduct;

(b) The names of the implicated staff member(s);

(c) Where and when the unsatisfactory conduct occurred;

(d) The names of potential witnesses to the unsatisfactory conduct; and

(e) All available supporting documentation.

4.6 The responsible official shall forward the information of unsatisfactory conduct received to OIOS and should, where possible, acknowledge receipt of such information.

4.7 Unless expressly provided for in the present instruction or other administrative issuances, staff members and third parties are not entitled to information about an investigation or action taken.

Section 5
Preliminary assessment of the information about unsatisfactory conduct

5.1 OIOS retains the ultimate authority to decide which cases it will consider and shall determine whether the information of unsatisfactory conduct received merits any action, and if so, is better handled by the responsible official or by OIOS. OIOS may at any time decide that a case is better handled by it.

5.2 If OIOS decides to investigate the unsatisfactory conduct, the responsible official will defer to OIOS and cease all involvement in the matter.

5.3 If OIOS determines that the matter is better handled by the responsible official, it shall send the matter back to the responsible official, who shall conduct a preliminary assessment to determine whether an investigation is warranted.

5.4 The responsible official may enlist the assistance of other staff members in conducting the preliminary assessment and may make further enquiries, including from the person(s) (if any) reporting the unsatisfactory conduct, the subject(s) of the report of unsatisfactory conduct, other staff member(s) and/or third person(s) believed to have relevant information.

5.5 In undertaking the preliminary assessment, the following factors may be considered:

(a) Whether the unsatisfactory conduct is a matter that could amount to misconduct;

[3] See Secretary-General's bulletin ST/SGB/273, on the establishment of the Office of Internal Oversight Services.

(b) Whether the provision of the information of unsatisfactory conduct is made in good faith and is sufficiently detailed that it may form the basis for an investigation;

(c) Whether there is a likelihood that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case;

(d) Whether an informal resolution process would be more appropriate in the circumstances;

(e) Any other factor(s) reasonable in the circumstances.

5.6 Upon conclusion of the preliminary assessment, the responsible official shall decide to either:

(a) Initiate an investigation of all or part of the matters raised in the information about unsatisfactory conduct; or

(b) Not initiate an investigation.

5.7 In cases where the responsible official decides not to initiate an investigation, the responsible Official should decide either to close the matter without further action or to:

(a) Take managerial action, without prior consultation with the staff member; and/or

(b) Issue a written or oral reprimand, provided the staff member has had the prior opportunity to comment in writing on the facts and circumstances, in accordance with staff rule 10.2 (c).

5.8 The responsible official shall inform OIOS of a decision to:

(a) Initiate an investigation;

(b) Take any administrative measures or managerial action; or

(c) Close the matter without further action.

Section 6
Investigations

Purpose and scope

6.1 The purpose of an investigation is to gather information to establish the facts that gave rise to the allegation of unsatisfactory conduct. The investigator(s) should pursue all lines of enquiry as considered appropriate and collect and record information, both inculpatory or exculpatory, in order to establish the facts. The investigator(s) shall not make a legal determination about the established facts.

Duty to cooperate

6.2 Pursuant to staff regulation 1.2 (r) and staff rule 1.2 (c), staff members are required to fully cooperate with all duly authorized investigations and to provide any records, documents, information and communications technology equipment or other information under the control of the Organization or under the staff member's control, as requested. Failure to cooperate may be considered unsatisfactory conduct that may amount to misconduct.

Investigation by the responsible official

6.3 Following a decision to initiate an investigation, the responsible official shall appoint an investigative panel or an investigating entity other than OIOS.

6.4 When setting up an investigative panel, the responsible official should normally appoint at least two individuals who have been trained and/or are experienced in conducting workplace investigations. If one or more of them are serving staff members, the responsible official should make efforts to appoint at least one member who is at the same or a higher functional level than the subject of the investigation. In the event that the composition of the panel varies from the foregoing criteria, reasons therefor should be recorded in writing.

6.5 The responsible official shall provide the panel members with clear terms of reference. The panel members shall sign a declaration acknowledging the absence of any conflict of interest. No panel member should serve without signing such declaration.

6.6 Staff members who are appointed to an investigative panel shall be given adequate release from their normal duties. In the event that one or more panel members are unable to continue to serve after the investigation has commenced, every effort shall be made to appoint the replacement panel member(s) in accordance with the terms of the present instruction. The investigation shall continue from the stage it reached before the replacement of the panel member(s), and the replacement panel shall not normally be required to reinterview witnesses or to recommence the investigation.

Interviews

6.7 The investigator(s) may digitally record an interview. Interviewees are not permitted to record their interviews. If an investigation report is to be transmitted to the Assistant Secretary-General for Human Resources Management for possible disciplinary action, a written record, such as transcripts of the interviews of the subject(s) of the investigation and key witnesses and synopses of the interviews of the other interviewees, shall be prepared of digitally recorded interviews and transmitted with the investigation report.

6.8 Where an interview is not digitally recorded, a record of the interview, such as a synopsis, written statement or record of questions and answers, shall be prepared and shared with the interviewee for the interviewee's signature. Interviewees shall be given a reasonable opportunity to review and provide comments on the record of interview, including comments regarding the interview process, before signing. If the interviewee does not review and/or sign the record of interview, the reasons given, if any, shall be noted on the record of interview or in the investigation report. Except as provided for in section 6.10, the interviewee is not normally entitled to retain a copy of the record of interview.

6.9 Except as provided for in section 6.10, interviewees are not entitled to the presence of a third party, including counsel, during an interview. If the investigator(s) determine that an interviewee has special needs, such as being under 18 years old, a "support person" may be present. A support person's role shall be limited to facilitating the conduct of the interview, where appropriate, and not to advocate on behalf of the interviewee or otherwise participate in the interview. Interviews should not be rescheduled owing to the unavailability of a support person. The investigator(s) will determine whether an interpreter is required for an interview.

6.10 A staff member who has been identified as the subject of an investigation shall be:

(a) Permitted to be accompanied by a staff member to act as an observer during an interview. An observer shall not participate in any way in the interview, including by speaking or gesturing in any manner. If the observer does not abide by

this requirement, the observer will be removed from the interview. An observer may take notes of the interview in handwritten form and must provide a copy of such notes to the investigator(s). If the subject decides to bring an observer to the interview, the subject shall ensure that the observer is available at the time scheduled. Interviews shall not be rescheduled owing to the unavailability of the observer;

(b) Informed in writing, prior to or at the start of the interview, that the staff member is the subject of an investigation and of the nature of the alleged unsatisfactory conduct;

(c) Informed of the name(s) of the investigator(s) in writing prior to the start of the interview;

(d) Given a reasonable opportunity, during the interview(s), to provide the staff member's version of the events and circumstances relevant to the allegations against the staff member and any other information that the staff member considers relevant;

(e) Given a reasonable opportunity to provide the investigator(s) with names and contact details of persons who may be in possession of relevant information about the matter under investigation;

(f) Given a reasonable opportunity to submit, within two weeks of the date of an interview, a written statement providing further information about the matters under investigation and/or the matters covered during the interview, together with relevant documentary information. Requests for extensions of time for submitting such statements must be made in writing to the investigator(s) and must include the reason for the requested extension, failing which it will be concluded that the subject has declined to provide a written statement; and

(g) Provided with a copy of the digital recording of the interview, if the interview was digitally recorded, and a written record, if available.

Access to United Nations records

6.11 Subject to sections 6.12, 6.13 and 6.14, an investigator shall have direct and prompt access to all records, documents or other information under the control of the Organization.

6.12 Subject to section 6.14, an investigator shall not have access to confidential records (including documents, communications and other information) in the possession of the Ethics Office, the Office of the United Nations Ombudsman and Mediation Services, the Office of Staff Legal Assistance or the Medical Services Division, provided that such records were prepared or obtained through a proper exercise of the listed offices' official functions. Should an investigator inadvertently obtain such records (e.g. through a review of a staff member's email records or computer hard drive), they shall be removed from the investigative record and shall not be relied upon in the context of the investigation or referenced in the investigation report.

6.13 Notwithstanding the provisions of section 6.12, an investigator may preserve, consider and/or rely upon the records referred to in section 6.12 where:

(a) The investigation concerns the listed office or its staff as the subject(s); or

(b) The staff member to whom the records relate or the office in question has provided written consent, for records pertaining to the Ethics Office, the Office of Staff Legal Assistance and the Medical Services Division.

Investigations involving information and communications technology resources and data

6.14 Investigations requiring access to information and communications technology resources and data shall follow the procedures contained in Secretary-General's bulletin ST/SGB/2004/15.

Investigation report

6.15 An investigation report shall be prepared at the conclusion of the investigation. It shall contain an analysis of the information obtained during the investigation and shall be accompanied by copies of all supporting documentation, which may include records of interviews, any written statements provided by the subject of the investigation or by other witnesses, documents, and/or photographs or other reproductions of any physical evidence.

6.16 The investigation report shall include a section setting out the factual findings resulting from the investigation.

6.17 In cases where the investigation includes a finding of financial loss to the Organization as a result of the actions of the subject(s), the investigation report should, where possible, specify the amount of financial loss attributable to the subject(s) and include a computation of the loss. This information may be used to effect financial recovery from the subject pursuant to staff rule 10.1 (b), as appropriate, and in accordance with the present instruction.

6.18 Adverse inference may be drawn in situations in which a staff member:

(a) Fails to attend one or more interviews without a satisfactory explanation;

(b) Provides false information or omits or withholds material information;

(c) Fails, during an investigation, to mention a matter or provide information without a satisfactory explanation, which the staff member subsequently seeks to rely on during a disciplinary process;

(d) Refuses to provide the investigator(s) with requested information or documentation that the staff member has, or can reasonably obtain or access.

6.19 The investigator(s) may inquire into the status of any proceedings by national authorities involving a staff member. Where applicable, documentation obtained from national authorities may form part of the investigative record.

6.20 If a staff member is on certified sick leave, the investigative and disciplinary processes shall normally proceed as envisaged in the present instruction, subject to consultation with the Medical Services Division. If the staff member is on any other leave, including maternity and paternity leave, the investigative and disciplinary processes should normally proceed as envisaged in the present instruction.

Section 7
Initial actions on an investigation report

Transmittal of OIOS investigation reports

7.1 Where an OIOS investigation finds that there is no factual basis indicating that a staff member engaged in unsatisfactory conduct, a closure notice shall be provided to the responsible official. OIOS shall also inform the subject of the investigation, in writing, that the investigation has been closed.

7.2 Where an OIOS investigation finds that there is a factual basis indicating that the staff member engaged in unsatisfactory conduct, the Under-Secretary-General for Internal Oversight Services shall:

(a) Submit the investigation report to the Assistant Secretary-General for Human Resources Management, together with all relevant supporting documentation, including copies of all written records of interviews and copies of any digital recordings of interviews; and

(b) Transmit a copy of the investigation report to the Under-Secretary-General for Legal Affairs, if the investigation report recommends possible referral to national authorities.

Transmittal of non-OIOS investigation reports

7.3 The investigator(s) shall transmit the investigation report together with supporting documentation to the responsible official, who shall submit a copy to OIOS.

7.4 Where an investigation not conducted by OIOS ("non-OIOS investigation") finds that there is no factual basis indicating that a staff member engaged in unsatisfactory conduct, the responsible official shall review the report to determine whether the official agrees with the findings of the investigation and, where further clarification on the findings of the investigation is required, may request additional information, including the taking of specific investigative action. If the responsible official agrees that there is insufficient evidence that a staff member engaged in unsatisfactory conduct, the responsible official shall take no further action and inform the subject of the investigation in writing. If the responsible official does not agree with the findings of the investigation, sections 7.5, 7.6 or 7.7 apply, as appropriate.

7.5 Where a non-OIOS investigation finds that there is a factual basis indicating that the staff member engaged in unsatisfactory conduct, but that such conduct, in the view of the responsible official, does not amount to misconduct, the responsible official shall:

(a) Decide to take no further action and inform the subject in writing; or

(b) Decide to take managerial action or administrative measures. Before the issuance of a reprimand, a staff member shall be given an opportunity to provide comments on the facts and circumstances, as provided for in staff rule 10.2 (c).

7.6 Where a non-OIOS investigation finds that there is sufficient evidence indicating that the staff member engaged in unsatisfactory conduct that, in the view of the responsible official, could amount to misconduct, the responsible official shall submit the investigation report to the Assistant Secretary-General for Human Resources Management, together with all relevant supporting documentation, including copies of all written records of interviews and copies of any digital recordings of interviews.

7.7 In cases falling within the scope of section 7.6, where the responsible official is the head of a peacekeeping mission or a special political mission, the responsible official shall submit the investigation report and supporting documentation to the Under-Secretary-General for Field Support, who will decide whether to transmit the investigation report to the Assistant Secretary-General for Human Resources Management, taking into account the recommendation of the responsible official on the matter.

Section 8
Disciplinary process

Decision on an investigation report

8.1 Upon receipt of the investigation report or a judgment from a national authority, the Assistant Secretary-General for Human Resources Management shall assess the report or judgment and supporting information and may make further enquiries, including from the staff member(s) concerned, obtain further information and/or transmit the matter back to the responsible official or to OIOS for further investigation. During the assessment, the Assistant Secretary-General for Human Resources Management and the Under-Secretary-General for Management shall not be constrained by the factual findings of the investigation.[4]

8.2 On the basis of the investigation report, supporting information and any additional information obtained, the Assistant Secretary-General for Human Resources Management shall decide whether to:

(a) Initiate a disciplinary process pursuant to staff rule 10.1 (c) by issuing written allegations of misconduct pursuant to section 8.3;

(b) Take managerial actions and/or administrative measures, if the unsatisfactory conduct, in the view of the Assistant Secretary-General for Human Resources Management, does not rise to the level of misconduct, or refer the matter to the responsible official for possible managerial and/or administrative action; or

(c) Close the matter; in such a case, the Assistant Secretary-General for Human Resources Management shall inform the subject staff member, the responsible official, OIOS and, if the investigation report contains a finding of financial loss to the Organization, the Controller.

Disciplinary process

8.3 Following a decision to initiate a disciplinary process, the Assistant Secretary-General for Human Resources Management shall provide the staff member with:

(a) The allegations of misconduct in writing, which should include the specific obligations or standards of conduct that the staff member breached;

(b) Notification of:

(i) The staff member's right to respond to the allegations of misconduct and to provide any evidence within a specified period in accordance with section 8.5;

(ii) The staff member's right to seek the assistance of counsel through the Office of Staff Legal Assistance, or from other counsel at the staff member's own expense; and

(iii) In relevant cases, the possibility of financial recovery if misconduct is established;

[4] Sections 8 and 9 of the present instruction shall apply in the context of the initiation of a disciplinary process as a result of a special procedure for specific types of misconduct provided for in other administrative issuances, including the Secretary-General's bulletins on financial disclosure and declaration of interest statements (ST/SGB/2006/6), the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5) and protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2) and the administrative instruction on private legal obligations of staff members (ST/AI/2000/12).

(c) A copy of the investigation report and the relevant supporting documentation. The copies of such documentation provided to a staff member may be subject to any measures, including redaction, adopted to ensure that the interests of the Organization or its staff members, including privileged information and safety and security concerns, are not adversely affected by the disclosure of particular information.

8.4 The allegations of misconduct, investigation report and supporting documentation may be transmitted to the staff member in hard copy or electronically. Where transmission to the staff member is in hard copy, this shall normally be done by registered mail or by hand. Where such documentation is transmitted to the staff member, the date of receipt shall be determined in accordance with section 2.4.

8.5 The staff member shall be given an opportunity to respond in writing to the allegations of misconduct within one month of the date of receipt of the allegations. The staff member may request, in writing, additional time to respond. Any such request must be made prior to the expiration of the deadline and must contain reasons for the request. If no response to the allegations of misconduct is received within the specified time limit, the matter may nevertheless proceed, without further notice to the staff member.

8.6 The Assistant Secretary-General for Human Resources Management may seek further information from any relevant source. Any new additional information received by the Assistant Secretary-General must be provided to the staff member for a further response. The staff member shall be given two weeks to respond to such additional information. The staff member may request, in writing, additional time to respond. Any such request must be made prior to the expiration of the deadline and must contain reasons for the request. If no response on the additional information is received within the specified time limit, the matter may nevertheless proceed, without further notice to the staff member. The Assistant Secretary-General for Human Resources Management may also seek confirmation or clarification of information already in the record before the Assistant Secretary-General.

8.7 During the disciplinary process, the staff member shall be responsible for including in the comments all information relating to the allegations of misconduct that the staff member wishes the decision maker to consider.

Section 9
Outcome of a disciplinary process

Action by the Assistant Secretary-General for Human Resources Management

9.1 The applicable standard of proof is:

(a) Clear and convincing evidence, for imposing separation or dismissal of the subject staff members. This standard of proof is lower than the criminal standard of "beyond a reasonable doubt"; and

(b) Preponderance of the evidence (more likely than not that the facts and circumstances underlying the misconduct exist or have occurred), for imposing any other disciplinary measure.

9.2 On the basis of the investigation report, all supporting documentation, and responses from the subject staff member, the Assistant Secretary-General for Human Resources Management shall decide whether to:

(a) Take no further action and inform the responsible official and the subject staff member accordingly;

(b) No longer pursue the matter as a disciplinary case and determine whether to take administrative measures and/or managerial action or refer the matter to the responsible official for possible managerial and/or administrative action;

(c) Recommend to the Under-Secretary-General for Management that the latter:

(i) Decide that the facts are established to the requisite standard of proof;

(ii) Impose disciplinary measures provided for in staff rule 10.2 (a);

(iii) Where relevant, take administrative measures and/or managerial action; and

(iv) Where relevant, make the determination referred to in section 9.5 and decide to recover the financial loss to the Organization, in full or in part.

Decision by the Under-Secretary-General for Management

9.3 Upon receipt of a recommendation of the Assistant Secretary-General for Human Resources Management, the Under-Secretary-General for Management shall make a decision on the recommendation. The decision of the Under-Secretary-General shall be communicated in writing to the staff member by the Assistant Secretary-General, with a copy to the responsible official. The decision may be communicated in hard copy or electronically. The date of receipt by the staff member of the decision shall be determined in accordance with section 2.4. However, a decision to separate or dismiss the staff member under staff rule 10.2 (a) (viii) or (ix) will be deemed to be received on the date the decision was electronically communicated.

9.4 The decision of the Under-Secretary-General for Management on the recommendation of the Assistant Secretary-General for Human Resources Management forms part of a staff member's record of service with the Organization and shall be placed in the official status file of the staff member concerned.

Recovery of financial loss to the Organization

9.5 In conjunction with a decision to impose a disciplinary measure, the Under-Secretary-General for Management shall, on the basis of the recommendation of the Assistant Secretary-General for Human Resources Management, determine whether the actions of the staff member were wilful, reckless or grossly negligent. The Under-Secretary-General may then decide to recover, in part or in full, any financial loss suffered by the Organization pursuant to staff rule 10.1 (b).

9.6 If a staff member will separate from service before the conclusion of investigative and/or disciplinary processes, the Under-Secretary-General for Management may decide to withhold the estimated financial loss suffered by the Organization from the staff member's final separation entitlements, until the investigation has been concluded and the findings support the imposition of financial recovery pursuant to staff rule 10.1 (b). In cases when the investigative and/or disciplinary processes cannot be finalized owing to the former staff member's lack of cooperation, the Organization has a right to recover the amount of the financial loss.

Inclusion of information in a former staff member's service records

9.7 A note will be prepared in order to document cases in which a staff member who is the subject of a report of unsatisfactory conduct separates from service before the investigation or the disciplinary process is concluded. Prior to placing a copy of the note in the former staff member's service records, the Office of Human

Resources Management will transmit a copy of the note to the most recent contact information on file for the former staff member.

9.8 The former staff member shall be given the opportunity to comment in writing on the note within a period of not less than two weeks. After the expiration of this period, the note may be placed on the staff member's service records, together with any comments provided.

9.9 The note placed on the former staff member's service records will indicate that the Office of Human Resources Management should be notified if the former staff member rejoins the Organization or another organization that is a member of CEB. Section 3.9 (d) of the administrative instruction on the administration of fixed-term appointments (ST/AI/2013/1), regarding the effect of resignation during the investigation or disciplinary process,[*] shall be referred to in the note to be placed on the staff member's service records if the staff member has been requested to continue to cooperate with any investigation and/or disciplinary process and has not responded, has declined or has not cooperated.

Section 10
Disclosure of information obtained during an investigation

10.1 All information obtained at any stage during the reporting of unsatisfactory conduct, the preliminary assessment, the investigation and the disciplinary process shall be considered confidential, subject to the exchange of information during investigations or among officials in undertaking their duties for the Organization and the reporting requirements of OIOS and any other departments and offices of the Organization to the General Assembly and Member States.

10.2 In circumstances involving a staff member who has applied for a vacancy in, or is transferring to, another organization that is a member of CEB, the Assistant Secretary-General for Human Resources Management may, upon the request of the organization in question, provide information about any ongoing investigation and/or disciplinary processes concerning the staff member. Such information may also be provided to a non-United Nations system entity or prospective employer of a staff member, upon the request of such entity or prospective employer, provided the written consent of the staff member to the disclosure of such information has been obtained by the entity or prospective employer and a copy of such consent provided to the Organization.

10.3 If a former staff member about whom unsatisfactory conduct was reported or who was a subject of an investigation or disciplinary process rejoins another organization that is a member of CEB, the Assistant Secretary-General for Human Resources Management, upon becoming aware thereof, may refer the matter, together with all supporting documentation, to the staff member's new employer for any action permitted under that organization's legal framework. Any such information received by the Assistant Secretary-General from another organization that is a member of CEB may be acted upon as information of unsatisfactory conduct or referral of a matter for possible disciplinary action in accordance with the provisions of the present administrative instruction.

[*] Section 3.9 provides that a former staff member will be ineligible for re-employment following the staff member's separation from service for any of the following reasons:

(a) Abandonment of post;

(b) Misconduct;

(c) Termination or non-renewal of appointment for unsatisfactory service;

(d) Resignation during an investigation of misconduct or institution of a disciplinary process, unless the former staff member agrees to cooperate with an ongoing investigation or disciplinary process until its conclusion.

Section 11
Administrative leave

11.1 In accordance with staff rule 10.4, a staff member may be placed on administrative leave with or without pay at any time after an allegation of suspected unsatisfactory conduct and pending the completion of the disciplinary process. The period of administrative leave may continue until the completion of the disciplinary process. Such action is without prejudice to the rights of the staff member and does not constitute a disciplinary measure. A staff member placed on administrative leave shall be given a written statement of the reason(s) for such leave and shall be informed of its likely duration.

11.2 A decision to place a staff member on administrative leave without pay shall be without prejudice to the continuation of any education grant to which the staff member may be entitled, as well as without prejudice to the continuation of health, dental and life insurance coverage and participation in the United Nations Joint Staff Pension Fund. The amount of pay withheld from the staff member during the period that the staff member is on administrative leave without pay shall be net of all contributions by the staff member and the Organization for maintaining such entitlements and benefits.

Administrative leave with pay

11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following the authorized official's determination that at least one of the following circumstances is met:

(a) The staff member is unable to continue effectively performing the staff member's functions, given the nature of those functions;

(b) Continued service by the staff member would create a risk that the staff member could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary process, including by retaliating against individuals protected under ST/SGB/2017/2 or intimidating a witness;

(c) The continued presence of the staff member on the Organization's premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;

(d) The staff member's continued presence at the office could have a negative impact on the preservation of a harmonious work environment;

(e) There is a risk of repetition or continuation of the unsatisfactory conduct.

Administrative leave without pay

11.4 A staff member may be placed on administrative leave without pay by an authorized official when at least one of the following conditions is met:

(a) There are reasonable grounds to believe (probable cause) that the staff member engaged in sexual exploitation and sexual abuse, in which case the placement of the staff member on administrative leave shall be without pay;

(b) There are exceptional circumstances that warrant the placement of the staff member on administrative leave without pay because the unsatisfactory conduct is of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2 (a) (viii) or (ix), and there is information before the

authorized official about the unsatisfactory conduct that makes it more likely than not (preponderance of the evidence) that the staff member engaged in the unsatisfactory conduct.

11.5 Provided that at least one of the conditions of section 11.4 is met, the authorized official may convert the staff member's administrative leave with pay to administrative leave without pay at any time pending the conclusion of the disciplinary process.

11.6 In accordance with staff rule 10.4 (d), if a staff member is placed on administrative leave without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal or separation, any pay withheld shall be restored. The Organization may decide not to restore any pay withheld for the period during which the staff member was placed on administrative leave without pay if the staff member separates from the Organization for any reason prior to the completion of the investigation or disciplinary process, and the matter cannot be pursued as a result of lack of cooperation on the part of the staff member.

Notification of placement on administrative leave

11.7 The notice of placement on administrative leave may be communicated to the staff member in hard copy or electronically. Where transmission to the staff member is in hard copy, this shall normally be done by registered mail or by hand. Where such documentation is transmitted to the staff member, the date of receipt shall be determined in accordance with section 2.4.

Obligations of a staff member on administrative leave

11.8 A staff member placed on administrative leave shall:

(a) Surrender the staff member's grounds pass and any United Nations laissez-passer;

(b) Return any United Nations-owned equipment that has been assigned to the staff member;

(c) Obtain written approval if the staff member wishes to enter United Nations premises during the period of administrative leave;

(d) Obtain written approval before leaving the duty station during the period of administrative leave;

(e) Immediately provide to the Administration, and update as necessary during the period of administrative leave, the staff member's current contact information, including telephone number(s), personal email address(es) and current residential address;

(f) Remain available to be contacted by the Organization through the contact information provided;

(g) Remain available for the purposes of cooperation with an investigation in accordance with staff regulation 1.2 (r) and staff rule 1.2 (c), participate in the disciplinary process and follow any directions and instructions issued by the Administration; and

(h) Request permission to engage in any outside activities in accordance with staff rule 1.2 (r) and the administrative instruction on outside activities (ST/AI/2000/13).

11.9 Where the Administration has made at least three documented attempts to contact the staff member on administrative leave using the most recent contact information provided, and the staff member does not contact the Administration within three weeks of the last documented attempt, then the matter may proceed to be considered under the administrative instruction on abandonment of post (ST/AI/400 as amended by ST/AI/2005/5).

Section 12
Miscellaneous

12.1 Investigations and the disciplinary process may be conducted and documented in either English or French. A staff member shall not have the right to the translation of any documents at the expense of the Organization.

12.2 Actions by officials under the present instruction should be taken without undue delay, taking into account the circumstances of each specific case.

12.3 The operational mandate of OIOS includes handling reports of unsatisfactory conduct received by it in accordance with its internal procedure. Nothing in the present instruction shall be construed to limit the operational independence of OIOS with regard to its mandated activities. Furthermore, nothing herein shall limit the discretionary authority of OIOS to undertake investigations into any and all matters concerning the Organization, before or after the separation of a staff member.

12.4 In accordance with article XI of the Staff Regulations and chapter XI of the Staff Rules, a staff member may file an application against a contested administrative decision, including the imposition of a disciplinary measure, before the United Nations Dispute Tribunal.

Section 13
Entry into force and transitional arrangements

13.1 The present instruction shall enter into force immediately.

13.2 Investigations and disciplinary processes initiated prior to the entry into force of the present instruction shall continue to be handled in accordance with the provisions of ST/AI/371 and ST/AI/371/Amend.1.

13.3 Administrative instructions ST/AI/371 of 2 August 1991 and ST/AI/371/Amend. 1 of 11 May 2010 and ST/AI/2004/3 of 29 September 2004 are hereby abolished.

(*Signed*) Jan **Beagle**
Under-Secretary-General for Management